

TO: MSSNY Officers, Councilors and Trustees

FROM: MSSNY's Legislative & Physician Advocacy Committee

DATE: November 1, 2018

**RE: Resolution 115 – 2018 House of Delegates
Chiropractor (D.C.) Scope of Practice
*Introduced by the Suffolk County Medical Society***

The following resolution was referred to the Council by the House of Delegates. The resolution was forwarded to the Legislative and Physician Advocacy Committee for further study and recommendation for the Council's consideration.

RESOLVED, that MSSNY reaffirm and seek further regulations in support of current AMA and MSSNY accepted policies on Clinical Diagnostic Electromyography; and be it further

RESOLVED, that MSSNY advocate for a State level taskforce to study the recent expansion of chiropractic scope of practice in New York and any out comes that this has had on patient care including the impact on health care costs in New York; and be it further

RESOLVED, MSSNY will advocate for amendment changes to the New York Education Law regarding needle electromyography currently performed by chiropractors in NYS, which include the following:

- 1. That needle electromyography is the practice of medicine and shall be performed and interpreted only by physicians licensed in the State of New York who are appropriate to perform and interpret such tests by virtue of specialty and training; and**
- 2. Chiropractors shall not be allowed to perform electrodiagnostic studies themselves. Nerve conduction studies may be offered in their place of business if the study is performed by a licensed physician who is appropriate to perform or interpret such tests by virtue of specialty and training.**
- 3. Non-physician individuals, as defined by the NYS Department of Education may not perform needle electromyography under any circumstance, whether or not the individuals are supervised by a licensed provider of any type. Non-physician individuals found to be performing needle electromyography in NYS should be appropriately warned and disciplined by NYS Department of Education; and be it further**

RESOLVED, that MSSNY advocate to the appropriate agencies, including the State of New York Insurance Department and the State of New York Workers' Compensation Board, as they relate to the care of individuals sustaining automobile and work-related injuries, respectively, that these principles be adapted into current and future statutes; and be it further

RESOLVED, that MSSNY expand the principles established in MSSNY Policy 110.998: "Non-physician Practitioners in Today's Health Care Delivery Systems" to apply to chiropractic scope of practice in New York State.

At the HOD, there was testimony in support for the goal of the resolution to limit the use of needle or 'invasive' electromyography to physicians. However, there were concerns from the Reference Committee regarding the extensive number of resolves called for in the resolution. There were also comments regarding studies that have shown that some family physicians, as well as patients are increasingly open to a more collaborative approach with chiropractors for treatment strategies to address back pain. As a result, the resolution was referred to Council.

To begin with, it should be noted that chiropractors have for many years been permitted to perform needle electromyography in New York based upon an interpretation of the chiropractic scope of practice. For example, a April 2002 opinion letter from the NYS Board for Chiropractic stated that:

Finally, Education Law Section 6551 authorizes chiropractors to use such diagnostic testing modalities as x-ray, clinical laboratory services and medical devices. Electrical devices may include but are not limited to Doppler ultrasound, somatosensory evoked potentials (SSEP), nerve conduction velocities (NCV) studies, electroencephalography (EEG), magnetic resonance imaging (MRI), surface and needle electromyography (EMG) and auditory brainstem testing. Such testing may be ordered or conducted within the statutory definition of chiropractic for the purposes of diagnosing nerve interference and the effects thereof resulting from or related to distortion, misalignment or subluxation of or in the vertebral column.

It should be noted that the AMA has adopted the following policy on this topic, urging that needle electromyography remain the practice of medicine, and that non-physicians should not expand their scope to include needle electromyography:

Clinical Diagnostic Electromyography H-275.990

1. **Clinical diagnostic** electromyographic examinations--involving the selection of the muscles to be studied, modifying the examination as the data unfold, inserting the needle electrodes, recording of and interpreting the data thereby obtained, describing the findings, and the rendering of a **diagnostic** opinion based upon an integration of the **clinical** history, physical examination features, other pertinent **clinical** data and the electromyographic findings--is the practice of medicine and should be performed only by a fully licensed physician qualified by reason of education, training, and experience in these procedures.
- 2 Non-physician health care professionals should not expand their scope of practice to include performing needle **electromyography**.
3. Physicians should not prepare reports and submit claims on needle electromyographic studies that they did not perform or personally supervise.
4. State boards of medical examiners should investigate and take appropriate action whenever cases involving the performance of **clinical** electromyographic examinations by unqualified persons contrary to the state medical practice acts are brought to their attention.

Moreover, MSSNY has long-standing policy 160.981 advocating for legislation or regulation to prohibit Physical Therapists from performing needle electromyography which includes the statement that "Needle electromyography is the practice of medicine and shall be performed and interpreted only by physicians licensed in the State of New York who are appropriate to perform and interpret such tests by virtue of specialty and training". Given these AMA and MSSNY policy statements, staff recommended and the Committee agreed, that it would be consistent for MSSNY to adopt a similar policy with regard to advocating to ensure that chiropractors do not perform needle electromyography.

It should be further noted that, at the October 18 Committee meeting, there was a discussion whether to add an additional resolved calling for MSSNY to advocate to the New York State Education Department that it investigate whether there have been adverse patient outcomes as a result of chiropractors performing needle EMGs. While there was general agreement as to the need for an outside entity to investigate whether there has been identified patient harms arising from chiropractors performing needle EMGs, there was concern about which entity was in the best position to undertake the action. Therefore, the Committee recommended against adding an addition resolution to designate the particular entity to conduct such investigation. Certainly, the below resolution encompasses working to identify situations where patients have been harmed as part of MSSNY's advocacy.

RECOMMENDATION: That the MSSNY Council that adopt the following substitute resolution in lieu of Resolution 115

RESOLVED, that the Medical Society of the State of New York advocate for legislation, regulation or other appropriate means to assure that needle electromyography is performed by licensed physicians only, or those who are directly supervised by a physician.